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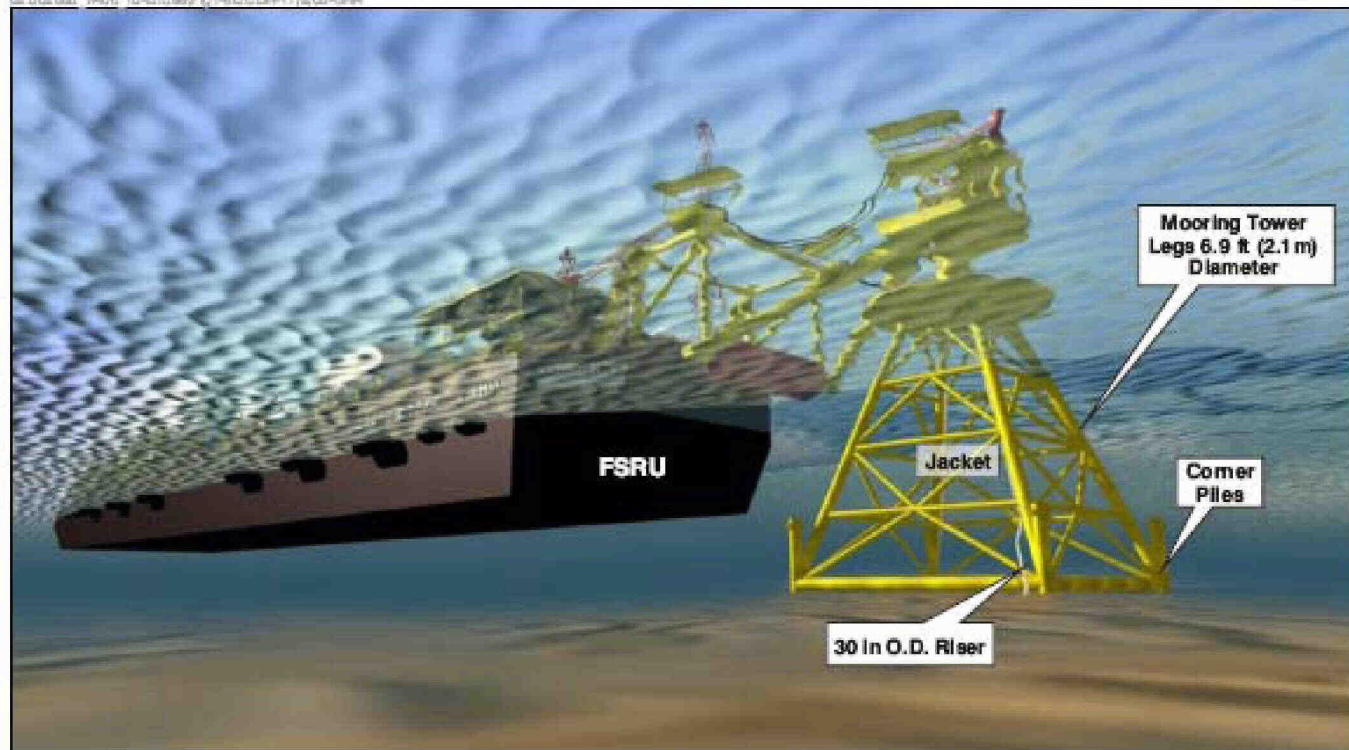


Figure 1-8b Subsea Depiction of YMS Jacket and FSRU

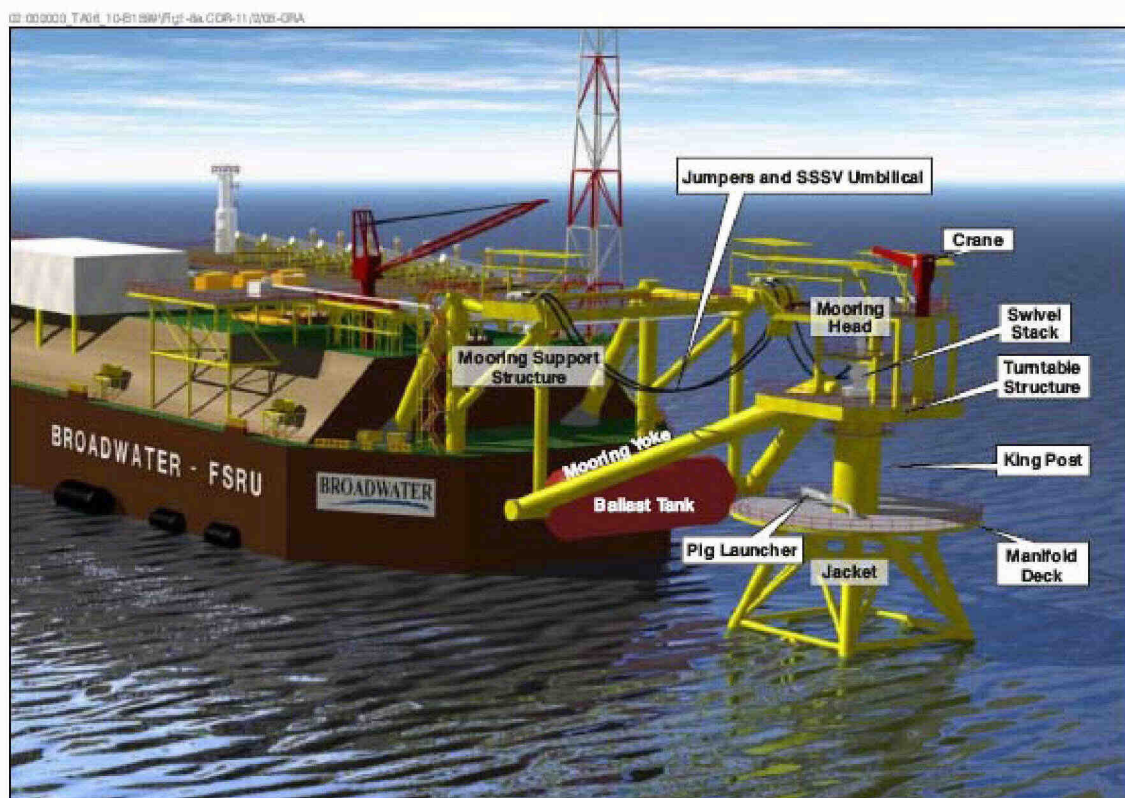
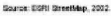


Figure 1-8a Detailed Depiction of Yoke Mooring System



BW010077

**STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES**

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In the Matter of the Petition of Broadwater Energy, LLC  
for a grant of an easement in lands under the waters of  
Long Island Sound in the Town of Riverhead, Suffolk County

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**OBJECTION OF THE  
TOWN OF RIVERHEAD**

The Town of Riverhead (“Riverhead” or “Town”) is in receipt of Broadwater Energy’s (“Broadwater’s”) one page Notice stating that its attorney plans to apply to the Commissioner of the Office of General Services (“OGS”) on November 17, 2006 pursuant to Section 3, Subdivision 2 of the Public Lands Law (“PBL”) for an easement authorizing Broadwater to occupy certain underwater lands beneath Long Island Sound in order to moor a proposed liquefied natural gas (“LNG”) floating storage and regasification unit (“FSRU”). The Notice states that any objection by the Town should be filed with OGS on or before November 17. Pursuant to the Notice and Part 270 of OGS’ rules, Riverhead hereby objects, and submits the following reasons in support of its objection. Riverhead reserves the right to submit additional information in support of its objection in the future.

**Reasons for Riverhead’s Opposition to Broadwater**

Riverhead has intervened in the ongoing Federal Energy Regulatory Commission (“FERC”) proceeding in opposition to Broadwater’s application for an LNG terminal. At FERC, Broadwater seeks authorization to construct floating LNG import facilities in Long Island Sound (the FSRU) under § 3 of the Natural Gas Act (“NGA”) (FERC Docket No. CP06-54), and certificates of public convenience and necessity for construction and operation of underwater

pipelines pursuant to § 7 of the NGA to transport natural gas from the FSRU to an existing underwater pipeline in Long Island Sound (FERC Dockets CP06-55 and CP06-56).<sup>1</sup>

Broadwater's Notice and Petition to OGS relate to underwater lands for the floating LNG terminal, not for the pipeline.

Suffolk County, the Towns of Southold, Brookhaven and Huntington have also intervened in opposition to Broadwater in these FERC proceedings, as have many citizen's groups and individuals. The FERC proceedings are far from complete, and FERC has not yet even completed its preliminary environmental assessment ("EA") under the National Environmental Policy Act ("NEPA") with respect to Broadwater's proposal. Public opposition is widespread throughout Long Island and southern Connecticut. In addition to the above FERC approvals, Broadwater also requires approvals from the Corps of Engineers ("COE"), the Coast Guard ("USCG"), NYS Department of State ("DOS"), and NYS Department of Environmental Conservation ("DEC"), among others.<sup>2</sup> None of these approvals has yet been obtained, and on information and belief, applications to these various agencies remain dormant pending FERC's progress on the EA pursuant to NEPA.

It is in this context that Broadwater now seeks an easement from NY OGS for the yoke mooring system ("YMS") which is proposed to anchor the FSRU to the bottom of Long Island Sound.<sup>3</sup> However, as explained below, OGS is powerless to act under the PBL. Moreover, assuming FERC authorized the LNG terminal under § 3 of the NGA, Broadwater would not

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<sup>1</sup> Broadwater's application to FERC is available at [www.ferc.gov/docs-filing/elibrary.asp](http://www.ferc.gov/docs-filing/elibrary.asp) in the above referenced dockets.

<sup>2</sup> See Broadwater's Resource Report 1 at p. 1-84 in FERC Docket CP 06-54 for Broadwater's list of other agency reviews and approvals that it believes are needed.

<sup>3</sup> Attached are Figures 1-1, 1-8a and 1-8b from Resource Report 1 of Broadwater's FERC application, depicting the project's offshore location and the FSRU's proposed mooring on State-owned lands beneath Long Island Sound.



thereby obtain condemnation power to take the State's underwater lands by eminent domain.

Accordingly, OGS should dismiss Broadwater's Petition.

Riverhead opposes construction and operation of the Broadwater FSRU because it would be a hazard to navigation and be unsafe, it would industrialize and unduly restrict public use of Long Island Sound, and it would impose unacceptable environmental risks and aesthetic impairment. Broadwater is not in the public interest. For these reasons, Suffolk County has enacted a local law that prohibits the FSRU in Long Island Sound waters within Suffolk County, including Riverhead. See Suffolk County Resolution 821-2006, "A Local Law to Prohibit the Construction and Operation of Liquefied Natural Gas (LNG) Floating Storage Regasification Units in The Long Island Sound", adopted August 28, 2006; filed with FERC in Docket CP06-54 October 17, 2006. OGS should respect Suffolk County's local law prohibiting Broadwater.

Riverhead's northerly boundary extends to the center of Long Island Sound, where it abuts the border between New York State and the State of Connecticut. (See NY Laws, 1881, Chapter 695). The FSRU would be moored in Long Island Sound wholly within the Town<sup>4</sup>, and the underwater pipelines proposed to be placed beneath Long Island Sound would in part lie within the Town. Riverhead is 78 square miles in land area, and has a population of about 33,000 persons. Safety, health, security, general welfare, aesthetics and reasonable use of private and public lands, including lands beneath Long Island Sound, are of paramount concern to those entrusted with governing Riverhead. Broadwater's application to FERC in fact admits that:

[The Town of] "Riverhead is a local host government whose municipal service delivery and public infrastructure has the potential to be impacted during construction and operation [of the project]". See Resource Report 5 at p. 5-16, January 2006.

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<sup>4</sup> Accord: United States Coast Guard's Waterways Suitability Report ["WSR"] for Broadwater, September 21, 2006 at p. 49: "The proposed location [of the FSRU] is in the Town of Riverhead." The WSR is available on the FERC web site in Docket No. CP06-54, et al, and on the Department of Homeland Security's web site at [www.uscgnewyork.com](http://www.uscgnewyork.com).

The Town submits on information and belief that construction and operation of the Broadwater project would impose severe and unacceptable adverse safety, security, aesthetic, environmental and other impacts on the Town, its people, and on the lands and waters within its jurisdiction, including:

a. Safety – The Town has grave concerns as to whether the FSRU could or would be safely designed and constructed, and as to the consequences of a “worst case” accident, such as an event in which the FSRU broke loose and was dashed against the shoreline in Riverhead, or elsewhere. Similar safety concerns apply to the foreign LNG tankers that would continuously supply the FSRU. The Coast Guard’s recent WSR has concluded that safety and security measures are wholly inadequate, and that heightened and costly safety and security must be developed, although no decisions have been made as to which layers of government would provide and pay for them.<sup>5</sup>

b. Security- FERC has determined that the engineering and design information about proposed new LNG terminals, such as Broadwater, would be useful to terrorists or saboteurs because incapacity or destruction of an LNG terminal would “negatively” impact public health and safety.<sup>6</sup> This fact alone shows that the Broadwater project can not be found to be safe or in the public interest. At best, the only presumption that can be drawn from FERC’s above determination, and from other the publicly available information, is that Broadwater is inherently unsafe and vulnerable to terrorism, thereby imposing unacceptable risks to the public safety and welfare. Therefore, the Town submits that Broadwater should not be approved.

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<sup>5</sup> WSR, supra fn. 3, at pp. 162: “... [A]dditional measures are necessary to responsibly manage the safety and security risks associated with the proposed [Broadwater] proposal.”

<sup>6</sup>. FERC Order 630, 102 FERC ¶61,190 (Feb 21, 2003) at pp. 22 and 26, as amended by FERC Order 630-A, 104 FERC ¶61,106 (July 23, 2003) at pp. 13-14.

Moreover, the Town and neighboring municipalities do not have emergency facilities sufficient to cope with a catastrophe attributable to a fire or comparable disaster involving LNG facilities.

c. Aesthetics – The FSRU will impose an unacceptable aesthetic eyesore, both from the Town's shoreline and from recreational boats using the Sound within the Town's jurisdiction.

d. Environmental degradation- If constructed and put into service, Broadwater would add pollutants to the waters of Long Island Sound within the Town and to the ambient air in the Town, the County of Suffolk and Connecticut. Fisheries will be adversely impacted because of dredging, and they will be perpetually threatened by potential spills from the FSRU and the tankers that will supply it.

e. Industrialization of Long Island Sound – Long Island Sound, including the area that the FSRU would occupy, is heavily used by recreational boaters, as well as commercial shippers and fishermen. The security zone proposed to be placed around the FSRU (and around incoming and outgoing supply tankers) will deny substantial areas of the Sound to these boaters and commercial interests, a matter of grave concern to the Town. Broadwater would diminish opportunities for recreational and commercial fishing in the Sound, impair recreational boating in the Sound, and set an unwelcome precedent for further industrial occupation of the Sound. These reasons support the conclusion that granting the requested easement by OGS would not be in the public interest.



**Broadwater's Notice and Petition are Defective  
Under the Public Lands Law  
and OGS' Rules and Regulations**

Broadwater's October 20 Notice is defective on its face. Assuming that Broadwater's yet to be filed OGS Petition conforms to the Notice, the Petition is also defective, and should be summarily dismissed.<sup>7</sup>

The Notice discloses at least three fatal defects: First, an easement to occupy underwater lands to moor the FSRU must be requested pursuant to § 75 of the PBL, not pursuant to § 3, subdivision 2, which applies only to pipelines and cables, not to mooring systems. Second, the requested easement may not be granted to Broadwater under § 75, because Broadwater is not the owner of adjacent uplands, and adjacent upland owners are the only persons entitled to acquire easements in underwater lands of the state. Third, even if Broadwater was an adjacent upland owner, the requested easements would need to be limited to occupation of underwater lands for the footprint of the YMS on the bottom of Long Island Sound; the Notice seeks an easement over a much larger, and undefined, area above which the FSRU and security vessels will float. If an easement was to be granted, OGS would need to make independent findings that Broadwater was safe, environmentally sound, and in the public interest. No such findings have been made, and there is no record upon which OGS could rationally make such findings.

**An Easement for the Mooring System can not  
be granted under PBL § 3 (2)**

Under PBL Article 2, § 3, subdivision 1, OGS is responsible for the general care and superintendence of all State lands not otherwise under the care of another department of the State. The second sentence of subdivision 2 of § 3 provides in relevant part that the

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<sup>7</sup> Riverhead respectfully requests that copies of the Petition and all other documents filed with OGS in this matter be provided by Broadwater's attorney, or in the case of filings originated by persons other than Broadwater's attorney, by the originator. Copies should be sent electronically, or by mail, to all counsel listed at the end of this Objection.

Commissioner of OGS may “...grant rights and easements in ... all state lands, including lands under water...” This general grant of authority is subsequently constrained by PBL Article 6, entitled “Grants of Land Under Water.” Article 6, § 75, states in relevant part:

“This section authorizes grants, leases, easements and lesser interests ... for the use of state-owned land under water...consistent with the public interest in the use of state-owned lands underwater for the purpose of navigation, commerce, fishing, bathing, and recreation; environmental protection; and access to the navigable waters of the state; with due regard for the need of affected owners of private property to safeguard their property....”

“(6) Adjacent to and surrounding Long Island...” (emphasis added).

Broadwater’s Notice states that it is petitioning OGS for grant of an easement pursuant to PBL Article 2, § 3, subdivision 2, not §75. On the other hand, grants of easements for use of underwater lands under §3, subdivision 2 may only be made for pipelines and cables, not moorings. PBL § 75(7)(b), which requires an easement from OGS in order to anchor or place a “mooring or other structure” on underwater lands of the State, excludes “pipelines” from the definition of “structure”. Section 75(7) (b) states in relevant part:

“For purposes of this subdivision, the term ‘structure’ shall not include discharge or intake pipes, pipelines, cables, or conduits.”

Thus, pipelines are not “structures” under Article 6, §75(7), meaning that OGS’ authority to grant easements for pipelines defaults to PBL §3(2). However, Broadwater’s proposed mooring for the FSRU is an enumerated structure in §75(7) (b), and is not excluded from the more stringent requirements of PBL Article 6. Subdivision 7(b) of §75 prohibits placement of “moorings” and “structures” in, on or above state-owned underwater lands unless an easement has been granted by OGS. Specifically, subdivision 7(b) states:

“No...mooring or other structure shall be ...anchored [or] placed ...on [state-owned] lands underwater, unless [an] ...easement is obtained ...” from OGS.

Riverhead submits that the FSRU's yoke mooring system is a "mooring" as that term is used in PBL §75(7) (b).<sup>8</sup> Riverhead further submits that fulfillment of PBL §75(7)(b)'s requirements that easement grants must be in the public interest, protect the environment, and assure adoption of safeguards for affected owners of affected property would be conditions precedent to any grant of Broadwater's Petition.

The distinction between applications for moorings and pipelines is amplified by Parts 270 and 271 OGS's Rules and Regulations.<sup>9</sup> Under part 270, moorings are prohibited unless an easement is obtained. The definition of "mooring" at § 270-2.1(11) of OGS's regulations plainly encompasses Broadwater's YMS.<sup>10</sup> Easements for pipelines, on the other hand, are excluded from Part 270, and are subject to Part 271.<sup>11</sup> However, both parts 270 and 271 require evidence of compliance with applicable environmental review and public interest requirements, such as SEQRA and COE permits.<sup>12</sup> These requirements have not been satisfied.

Thus, Broadwater's Notice and Petition are defective. PBL §3(2) is not available to allow OGS to grant an easement for Broadwater FSRU's mooring system, the so-called YMS.

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<sup>8</sup> See Broadwater's Resource Report 1 at § 1.3.2.4 and Figures 1-8a and 1-8b (attached), which identify the structure that would hold the FSRU fast to the bottom of Long Island Sound as the "yoke mooring system" or YMS.

<sup>9</sup> On OGS' web site at [www.ogs.state.ny.us/aboutOgs/regulations/statutes/chapter2.html](http://www.ogs.state.ny.us/aboutOgs/regulations/statutes/chapter2.html)

<sup>10</sup> Section 270-2.1(11) states: " 'Mooring' means a float, buoy, chain, cable, rope, pile, spar, dolphin or any other device or combination of devices which is anchored or fixed in State-owned lands underwater, to which a boat/vessel may be made fast." The FSRU and the tanker ships that would offload LNG to it are clearly "vessels" that would be "made fast" to the YMS, which is a "mooring" within the meaning and intent of § 75 of the PBL and Rule 270-2.1(11).

<sup>11</sup> See § 270-3-1.

<sup>12</sup> See § 270-4.6 and § 271-1.2.

**The requested easement may not be granted under §75, because easements to use lands under water for moorings may only be granted to adjacent upland owners, and Broadwater is not such an owner.**

While subdivision 6 of §75 gives OGS the power to grant an easement of state-owned land beneath Long Island Sound, that power is limited by §75(7)(a) to grants to the owners of adjacent lands.<sup>13</sup> Section 75(7)(a) says in relevant part:

“[OGS] may grant ... to the owners of land adjacent to the land underwater specified in this section, to promote ... commerce...for beneficial enjoyment ... by such owners, or for agricultural purposes, or for public park, beach, street,...recreation or conservation purposes, ... land underwater.... Any such grant made to any other person shall be void, [subject to exceptions not relevant here]” (PBL § 75(7)(a) [emphasis added]).

Therefore, the requested easement may not be granted to Broadwater under §75 of the PBL because Broadwater is not the owner of adjacent land. In fact the Notice admits that Broadwater is not an adjacent upland owner, because it claims that the requirement to disclose the identity of the upland owner is “not applicable.” The proposed mooring would be nine miles offshore. See Figure 1, attached. In other words, the requested grant can not be made, and if made, would be void, per the express terms of PBL §75.

**Broadwater would not have the right to condemn underwater lands for the FSRU’s mooring in the event that FERC granted the requested authorization for the LNG terminal under NGA § 3.**

The simpler PBL Article 2, §3 procedure, as applicable to easements for interstate natural gas pipelines under water, recognizes that a FERC pipeline certificate granted pursuant to NGA §7 preempts state authority,<sup>14</sup> and grants the power of eminent domain to the certificate

<sup>13</sup> Accord: Lupo v. Board of Assessors of the Town of Huron, 10 Misc. 3d 473 (Sup. Ct., Wayne Co., 2005) at 480.

<sup>14</sup> See, e.g., Schneideiwind v. ANR Pipeline Co., 485 U.S. 293; National Fuel Gas Supply v. Pubic Service Commission, 894 F.2d 571 (2d Cir. 1990); Iroquois Gas Transmission System, L.P., et al., 52 FERC ¶ 61,091 and 59 FERC ¶ 61,094 (1992).

holder.<sup>15</sup> Accordingly, the process for OGS to grant an easement for a certificated underwater gas pipeline is relatively *pro-forma*, because an NGA §7 certificate holder could condemn the underwater state-owned lands if OGS denied a petition for an easement for a natural gas pipeline.<sup>16</sup>

On the other hand, a successful applicant under NGA §3 for authorization to construct and operate an LNG terminal facility,<sup>17</sup> such as the FSRU and its mooring, does not enjoy eminent domain powers. This important distinction between FERC pipeline certificates and LNG authorizations was recently explained by FERC in its Order in the Weaver's Cove LNG terminal case, issued in July, 2005.<sup>18</sup> In *Weaver's Cove*, FERC discussed a dispute involving title to lands for a proposed LNG terminal, and noted that the title problem was beyond FERC's power to resolve, and was a matter of State law. In a footnote, FERC added:

“When the Commission issues a certificate under section 7 of the NGA to construct pipeline facilities, the certificate provides the right for the pipeline company to acquire property for an easement for the pipeline, either through negotiation with the landowner, or through eminent domain procedures should negotiation not result in an agreement. Authorizations of projects under NGA §3 do not convey such rights to acquire [by] eminent domain.”<sup>19</sup>

Thus, Broadwater has no federal power to condemn underwater lands needed to moor the Broadwater LNG terminal. And OGS has no legislative authority to grant an easement for the mooring to Broadwater. Therefore, Broadwater may not moor the FSRU on State-owned lands in Long Island Sound.

<sup>15</sup> NGA § 7(h), 15 USCA § 717f(h).

<sup>16</sup> See *Islander East Pipeline v. Connecticut*, \_\_F 3d\_\_, Docket No. 05-4139-ag (2d Cir., October 5, 2006), where Islander East pipeline's right of way crosses underwater lands in Long Island Sound owned by the State of Connecticut. The Second Circuit noted that “Islander East's authorization to exercise the power of eminent domain to obtain a right of way for the natural gas pipeline unquestionably comes from the FERC in accordance with its authority under the NGA.” slip opinion at p. 22.

<sup>17</sup> NGA § 3 was amended by § 311 of the Energy Policy Act of 2005, P.L. 109-58, eff. August 8, 2005, which addresses FERC's authority to authorize LNG facilities.

<sup>18</sup> *Weaver's Cove Energy, LLC*, Order Granting Authority Under Section 3 of the Natural Gas Act and Issuing Certificate, FERC Docket CP04-36-000, et al, 112 FERC ¶ 61,070, July 15, 2005.

<sup>19</sup> *Id* at fn 26.



Even assuming that Broadwater was, or somehow became, an adjacent upland owner, OGS would have an affirmative responsibility under PBL §75 to make a searching review of the applicable facts and policies, to determine whether the project would be safe, in the public interest, and environmentally acceptable. In such a case, OGS could not grant an easement in a *pro-forma* manner; it could not “act as an umpire, blandly calling balls and strikes...; the right of the public [would need to] receive active and affirmative protection [from OGS].”<sup>20</sup> However, as Broadwater is not an upland owner, and the required easement is for a mooring structure, OGS is powerless to act under the PBL. Broadwater’s Petition should therefore be dismissed.

### Conclusion

Accordingly, OGS should deny Broadwater’s Petition because OGS is powerless to issue the requested easement; because its Petition is defective under the Public Lands Law; because the Broadwater project is unsafe, not in the public interest, and environmentally unsound; and because Broadwater’s proposal is prohibited by Suffolk County Law.

In the event that OGS nevertheless continues to entertain Broadwater’s petition, then Riverhead respectfully requests that OGS convene a full hearing pursuant to §10 of the PBL and Part 270 of OGS’s Rules for further airing of these issues.

Respectfully submitted,

s/ G. S. Peter Bergen

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<sup>20</sup> See *Scenic Hudson Preservation Conference v. FPC*, 354 F. 2d 608 (2d Cir. 1965).

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Port Washington, NY  
November, 13, 2006

**STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES**

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In the Matter of the Petition of **Broadwater Pipeline, LLC**  
for a grant of an easement in lands under the waters of Long Island Sound  
in the Towns of Riverhead, Brookhaven, and Smithtown, Suffolk County

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**OBJECTION OF THE  
TOWN OF RIVERHEAD  
TO NOTICE OF BROADWATER PIPELINE, LLC**

The Town of Riverhead (“Riverhead” or “Town”) is in receipt of Broadwater Pipeline LLC’s (“Broadwater Pipeline’s”) one page Notice stating that it intends to apply to the Commissioner of the Office of General Services (“OGS”) on November 17, 2006 pursuant to Section 3, Subdivision 2 of the Public Lands Law (“PBL”) for an easement authorizing Broadwater to occupy certain underwater lands beneath Long Island Sound in order to construct (1) a mooring tower associated with a proposed liquefied natural gas (“LNG”) floating storage and regasification unit (“FSRU”) and (2) a sub-sea pipeline, that would interconnect the FSRU with an existing pipeline that crosses Long Island Sound, as depicted on a map attached to the Notice. The Notice states that any objection by the Town should be filed with OGS on or before November 17. Pursuant to the Notice and Parts 270 and 271 of OGS’ rules, Riverhead hereby objects, and submits the following reasons in support of its objection. Riverhead reserves the right to submit additional information in support of its objection in the future.<sup>1</sup>

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<sup>1</sup> Riverhead respectfully requests that copies of the Petition of Broadwater Pipeline LLC and all other documents filed with OGS filed in connection with the above Notice and the related Notice filed on behalf of Broadwater Energy, LLC be provided by Broadwater’s attorney, or in the case of filings originated by persons other than Broadwater’s attorney, by the originator. Copies should be sent electronically, or by mail, to all counsel listed at the end of this Objection.

Riverhead joins in and supports Suffolk County's Objection to the Notices in the above captioned Broadwater Pipeline, LLC matter and the Broadwater Energy, LLC matter.

**Reasons for Riverhead's Opposition to the Broadwater Project**

Riverhead has intervened in the ongoing Federal Energy Regulatory Commission ("FERC") proceeding in opposition to applications by Broadwater Energy and Broadwater Pipeline for permission to build an LNG terminal and associated pipeline. At FERC, Broadwater Energy, LLC seeks authorization to construct floating LNG import facilities and an associated mooring structure in Long Island Sound (the FSRU) under § 3 of the Natural Gas Act ("NGA") (FERC Docket No. CP06-54); Broadwater Pipeline seeks certificates of public convenience and necessity for construction and operation of underwater pipelines pursuant to § 7 of the NGA to transport natural gas from the FSRU to an existing underwater pipeline in Long Island Sound (FERC Dockets CP06-55 and CP06-56).<sup>2</sup> This Objection opposes Broadwater Pipeline's request for easements for both the mooring structure and the pipeline.

**Riverhead opposes the Broadwater Project because it would be unsafe, be a threat to security, cause unacceptable environmental harm and aesthetic impairment, and industrialize Long Island Sound**

Riverhead's northerly boundary extends to the center of Long Island Sound, where it abuts the border between New York State and the State of Connecticut. (See NY Laws, 1881, Chapter 695). The Broadwater Project's<sup>3</sup> FSRU would be moored in Long Island Sound wholly within the Town<sup>4</sup>, and the Project's underwater pipelines would in part lie within the Town.

<sup>2</sup> Broadwater's applications to FERC are available at [www.ferc.gov/docs-filing/elibrary.asp](http://www.ferc.gov/docs-filing/elibrary.asp) in the above referenced dockets.

<sup>3</sup> The terminal facilities and pipeline are collectively called the "Broadwater Project" in this Objection.

<sup>4</sup> Accord: United States Coast Guard's Waterways Suitability Report ["WSR"] for Broadwater, September 21, 2006 at p. 49: "The proposed location [of the FSRU] is in the Town of Riverhead." The WSR is available on the FERC

Riverhead is 78 square miles in land area, and has a population of about 33,000 persons. Safety, health, security, general welfare, aesthetics and reasonable use of private and public lands, including lands beneath Long Island Sound, are of paramount concern to those entrusted with governing Riverhead. Broadwater's application to FERC in fact admits that:

[The Town of] "Riverhead is a local host government whose municipal service delivery and public infrastructure has the potential to be impacted during construction and operation [of the project]". See Resource Report 5 at p. 5-16, January 2006.

Riverhead submits on information and belief that construction and operation of the Broadwater Project would impose severe and unacceptable adverse safety, security, aesthetic, environmental and other impacts on the Town, its people, and on the lands and waters within its jurisdiction, including:

a. Safety – The Town has grave concerns as to whether the FSRU could or would be safely designed and constructed, and as to the consequences of a "worst case" accident, such as an event in which the FSRU broke loose from its mooring and was dashed against the shoreline in Riverhead, or elsewhere. Similar safety concerns apply to the foreign LNG tankers that would continuously supply the FSRU. The Coast Guard's recent WSR has concluded that safety and security measures are wholly inadequate, and that heightened and costly safety and security must be developed, although no decisions have been made as to which layers of government would provide and pay for them.<sup>5</sup>

b. Security- FERC has determined that the engineering and design information about proposed new LNG terminals, such as Broadwater's FSRU, would be useful to terrorists or saboteurs because incapacity or destruction of an LNG terminal would "negatively" impact

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web site in Docket No. CP06-54, et al, and on the Department of Homeland Security's web site at [www.uscgnewyork.com](http://www.uscgnewyork.com).

<sup>5</sup> WSR, supra fn. 3, at pp. 162: "... [A]dditional measures are necessary to responsibly manage the safety and security risks associated with the proposed [Broadwater] proposal."



public health and safety.<sup>6</sup> This fact alone shows that the Broadwater Project can not be found to be safe or in the public interest. At best, the only presumption that can be drawn from FERC's above determination, and from other the publicly available information, is that the Broadwater Project is inherently unsafe and vulnerable to terrorism, thereby imposing unacceptable risks to the public safety and welfare. Therefore, the Town submits that the Broadwater Project should not be approved. Moreover, the Town and neighboring municipalities do not have emergency facilities sufficient to cope with a catastrophe attributable to a fire or comparable disaster involving LNG facilities.

c. Aesthetics – The FSRU will impose an unacceptable aesthetic eyesore, both from the Town's shoreline and from recreational boats using the Sound within the Town's jurisdiction.

d. Environmental degradation- If constructed and put into service, Broadwater' FSRU would add pollutants to the waters of Long Island Sound within the Town and to the ambient air in the Town, the County of Suffolk and Connecticut. Fisheries will be adversely impacted because of dredging for the pipeline and the mooring system, and fisheries will be perpetually threatened by potential spills from the FSRU and the tankers that will supply it.

e. Industrialization of Long Island Sound – Long Island Sound, including the area that the FSRU would occupy, is heavily used by recreational boaters, as well as commercial shippers and fishermen. The security zone proposed to be placed around the FSRU (and around incoming and outgoing supply tankers) will deny substantial areas of the Sound to these boaters and commercial interests, a matter of grave concern to the Town. The Broadwater Project would diminish opportunities for recreational and commercial fishing in the Sound, impair recreational

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<sup>6</sup>. FERC Order 630, 102 FERC ¶61,190 (Feb 21, 2003) at pp. 22 and 26, as amended by FERC Order 630-A, 104 FERC ¶61,106 (July 23, 2003) at pp. 13-14.

boating in the Sound, and set an unwelcome precedent for further industrial occupation of the Sound. These reasons justify the conclusion that Broadwater is not in the public interest. OGS should therefore dismiss Broadwater Pipeline's and Broadwater Energy's Petitions for easements for the proposed mooring and pipeline.

**Granting the requested easements would violate Suffolk County Law**

Suffolk County has enacted a local law that prohibits the FSRU in Long Island Sound waters within Suffolk County, including Riverhead. See Suffolk County Resolution 821-2006, "A Local Law to Prohibit the Construction and Operation of Liquefied Natural Gas (LNG) Floating Storage Regasification Units in The Long Island Sound", adopted August 28, 2006; filed with FERC in Docket CP06-54 October 17, 2006. OGS should respect Suffolk County's local law prohibiting the Broadwater Energy facility, and since the pipeline would have no purpose without the FSRU, OGS should dismiss Broadwater Pipeline's Petition in addition to Broadwater Energy's Petition.

**Broadwater Pipeline's Petition is premature  
because environmental review and  
FERC certification proceedings are incomplete**

Suffolk County, and the Towns of Southold, Brookhaven and Huntington, have also intervened in opposition to the proposals of Broadwater Energy and Broadwater Pipeline in the consolidated FERC proceedings, as have many citizen's groups and individuals. The FERC proceedings are far from complete, and FERC has not yet even completed its preliminary environmental assessment ("EA") under the National Environmental Policy Act ("NEPA") with respect to Broadwater's proposal. Public opposition is widespread throughout Long Island and

southern Connecticut. In addition to the above FERC approvals, Broadwater also requires approvals from the Corps of Engineers (“COE”), the Coast Guard (“USCG”), NYS Department of State (“DOS”), and NYS Department of Environmental Conservation (“DEC”), among others.<sup>7</sup> None of these approvals has yet been obtained, and on information and belief, applications to these various agencies remain dormant pending FERC’s progress on the EA pursuant to NEPA. There has been no SEQRA review. Public input has just begun.

Alternative pipeline routes have yet to be identified and examined in any environmental review, either under SEQRA or NEPA. However, a pipeline route through lands beneath Long Island Sound in Connecticut may be considerably shorter, and requires evaluation. Such a shorter route would require less dredging of the Sound’s bottom, and accordingly would be less damaging from an environmental standpoint, than Broadwater Pipeline’s proposed 21 mile route.

Therefore, as environmental review is incomplete, OGS may not act at this time on Broadwater Pipeline’s Petition for easements for the pipeline. Action prior to environmental review would contravene SEQRA, and Parts 270 and 271 of OGS’ implementing regulations.

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<sup>7</sup> See Broadwater’s Resource Report 1 at p. 1-84 in FERC Docket CP 06-54 for Broadwater’s list of other agency reviews and approvals that it believes are needed.

**Broadwater Pipeline's Petition,  
to the extent that it seeks an easement  
for the mooring system, should be dismissed  
for the reasons given in Riverhead's Objection  
to the Petition of Broadwater Energy**

Broadwater Energy, LLC filed its related Notice of its intent to petition for an easement for the yoke mooring system ("YMS") in the context of the above incomplete FERC proceedings and inchoate applications to other agencies. Riverhead filed its Objection to Broadwater Energy's Notice on November 13, 2006.<sup>8</sup> As Riverhead explained in that Objection, OGS is powerless to act under the PBL to grant an easement for the YMS because PBL § 3(2) is not available for easements for moorings. Moreover, PBL § 75 allows easements to be granted only to adjacent landowners, and neither Broadwater Energy nor Broadwater pipeline is such an owner. For the reasons given in Riverhead's November 13, 2006 Objection therefore, OGS should dismiss Broadwater Pipeline's Petition to OGS. To the extent that Broadwater Pipeline seeks an easement for a mooring tower, OGS can not act because the YMS is a mooring, a structure that can not be authorized under PBL § 3(2); moreover PBL § 75 prohibits grants of easements for moorings and related structures on underwater State-owned lands, except where the grantee owns adjacent uplands. Broadwater Pipeline is not an owner of adjacent uplands. Since OGS can not grant an easement for the pipeline, it should also dismiss Broadwater Pipeline's petition to the extent that it seeks an easement for the pipeline.

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<sup>8</sup> Attached to that Objection are Figures 1-1, 1-8a and 1-8b from Resource Report 1 of Broadwater's FERC application, depicting the project's offshore location and the FSRU's proposed mooring on State-owned lands beneath Long Island Sound.

### Conclusion

OGS should dismiss Broadwater Pipeline's Petition (1) because OGS is powerless to issue an easement for the mooring system for the reasons stated in Riverhead's November 13 Objection to Broadwater Energy's Petition; (2) because any grant by OGS for pipeline right-of-way would be premature at this time, as environmental review has not been completed under either SEQRA or NEPA; (3) because viable shorter and less environmentally damaging routes exist for the pipeline, which merit environmental review prior to any action by OGS; (4) because the Broadwater Project is unsafe, not in the public interest, and environmentally unsound; and (5) because Broadwater Energy's proposal is prohibited by Suffolk County Law. then Riverhead respectfully requests that OGS convene a full hearing pursuant to §10 of the PBL and Parts 270 and 271 of

In the event that OGS nevertheless continues to entertain Broadwater Pipeline's petition, OGS's Rules for further airing of these issues. Any such hearing should consolidate hearings on the Petitions of both Broadwater Pipeline and of Broadwater Energy.

Respectfully submitted,  
s/ G. S. Peter Bergen  
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Port Washington, NY  
November, 15, 2006



**G. S. Peter Bergen  
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November 21, 2006

**Via Electronic Filing**

Ms. Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E., Room 1-A  
Washington, DC 20426

**Re: Broadwater Energy, LLC – Docket No. CP06-54-000  
Broadwater Pipeline, LLC – Docket Nos. CP06-55-00  
CP06-56-000**

Dear Secretary Salas:

On behalf of the Town of Riverhead, NY, an intervenor in these dockets, I enclose for filing the Objections of the Town of Riverhead to Broadwater Energy's and Broadwater Pipeline's Notices of intent to petition the New York State Office of General Services for easements to occupy New York State-owned lands beneath Long Island Sound in connection with the Broadwater Project.

These are public documents.

Sincerely yours,  
*s/ G. S. Peter Bergen*  
G. S. Peter Bergen,  
Attorney for the Town of Riverhead

cc: Robert J. Alessi, Esq. (via e-mail)  
Dawn Thomas, Esq. (via e-mail)  
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